

## II. Remarks

Reconsideration and re-examination of this application in view of the above amendments and the following remarks is herein respectfully requested.

After entering this amendment, claims 1-14 remain pending.

### *Finality of Rejection*

It is respectfully submitted that the finality of the present invention is premature and should be withdrawn. More specifically, the rejection based on Fernstrum (U.S. Patent No. 5,931,217) is a new grounds of rejection not necessitated by any prior amendments of Applicant.

### *Claim Rejections - 35 U.S.C. § 102(b)*

Claims 1, 2 and 7-11 have been rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 5,931,217 to Fernstrum ("Fernstrum"). Applicant respectfully traverses this rejection.

In the examiner's rejection, the examiner refers to Fig. 4 of Fernstrum, as well as to a "groove 47" and a base "portion 30" thereof. In reviewing Fig. 4 and the remainder of the Fernstrum reference, no groove 37 or base portion 30 are referred to in the reference. It is therefore believed that the examiner meant to attach a marked up copy of Fernstrum's Fig. 4 and that this marked up version of Fig. 4 was inadvertently omitted from the Office Action. As the examiner will appreciate, this has made the current rejection of claims 1, 2 and 7-14 under § 102 difficult to understand. It is therefore

requested that the examiner reissue the Office Action with the appropriately marked up version of Fernstrum's Fig. 4.

In the interest of advancing the present application to issuance, comments are being provided herein regarding Fernstrum.

In Fernstrum, the slots 67 extend from a bottom face 65 into an inclined face 61 and a side face 59. The tube 3 is provided at its end with faces 73 and 75. These faces 73 and 75 of the tube 3 are specifically recited in Fernstrum as being attached to faces 65, 61 and 59 of the header 1. (See Fernstrum, col. 4, lines 5-8). Thus the tube 3 does not extend into the slot 67. In the claims of the present application, the tube is specifically recited as extending into the slot. By extending into the slot, the step portions engage the tube along a length of the surface of the tube while the base portion engages the tube along a width of the surface of the tube. Since these surface directions are angled with respect to one another, they cooperated to structurally support the tube in the header by forming a bracketed construction. Generally, by engaging the tube along a portion of its length, the step portions of the slot prevent the tube from being pivoted in the slot about the line of contract defined by the base portion of the slot and extending width-wise across the tube. By attaching the end faces of the tube to outer faces of the header in Fernstrum, the claimed construction, with the tube extending through the slot, is not disclosed.

Additionally, the slot of Fernstrum backs the claimed end sections of the slot extending into step portions on opposite sides of the base portion. In Fernstrum, the slot terminates at the right side of the bottom face 65 without extending into the side face 63. This is readily seen in Figure 4 and supported by the written disclosure (see

col. 4, line 1) of Fernstrum, that only the forces 59, 61 and 65 have slots 67 formed therein, and that face 63 does not.

Claims 2 and 7-14 depend either directly or indirectly from claim 1. These claims are likewise allowable at least for the same reasons as claim 1.

*Claim Rejections - 35 U.S.C. §103(a)*

Claims 3-6 have also been rejected under 35 U.S.C. 103(a) as being unpatentable over Fernstrum.

Since claims 3-6 depend from Claim 1, which Applicant respectfully submits is patentable for the reasons given above, it follows that claims 3-6 are likewise patentable, for at least the same reasons.

*Conclusion*

In view of the above amendments and remarks, it is respectfully submitted that the present form of the claims are patentably distinguishable over the art of record and that this application is now in condition for allowance. Such action is respectfully requested.

Respectfully submitted,

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